

Jul 23, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RUTH ANN CONDE CHEESMAN,

Plaintiff,

v.

ELLENSBURG SCHOOL DISTRICT,

JOHN GRAF, TIA ROSS, NANCY

WILBANKS,

Defendants.

No. 1:18-cv-03218-SAB

**ORDER DENYING
MOTION TO DISMISS**

Before the Court is Defendant's Motion to Dismiss under Rule 12(b)(6), ECF No. 23. The motion was heard without oral argument.

On January 8, 2019, the Court reviewed Plaintiff's Complaint under 28 U.S.C. § 1915 and concluded that Plaintiff alleged sufficient facts for her § 1983 claims to survive review. ECF No. 7. The Court dismissed claims 3, 4, 6, 7, 8, 10, 12, and 13.

Defendants filed an Answer on March 1, 2019, ECF No. 14, and a Scheduling Order was entered on June 5, 2019, ECF No. 22. On that same day, Defendants filed their Motion to Dismiss for Failure to State a Claim Under Rule 12(b)(6). ECF No. 23.

ORDER DENYING MOTION TO DISMISS ~ 1

1 Defendants' Motion to Dismiss is untimely because it was not filed prior to
2 the responsive pleading. *MacDonald v. Grace Church Seattle*, 457 F.3d 1079,
3 1081 (9th Cir. 2006). Plaintiff asks the Court to hold Defendants in contempt for
4 filing their motion. The Court declines to do so.

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Defendant's Motion to Dismiss under Rule 12(b)(6), ECF No. 23, is
7 **DENIED.**

8 2. Plaintiff's Motion for Contempt, ECF No. 26, is **DENIED.**

9 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
10 and forward copies to Plaintiff and counsel.

11 **DATED** this 23rd day of July 2019.



17
18

A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

19 Stanley A. Bastian
20 United States District Judge
21
22
23
24
25
26
27
28